

1 (preferably the chairperson) is **absolutely required**.

2 Any insurance company that is a party or is contractually required to defend or to pay damages,
3 if any, assessed within its policy limits in this case must have a fully authorized settlement
4 representative present. Such representative must have final settlement authority to commit the
5 company to pay, **in the representative's own discretion**, an amount within the policy limits, or up
6 to the Plaintiff's last demand, whichever is lower. If trial counsel has been fully authorized to commit
7 the client to pay or to accept in settlement the amount last proposed by the opponent, in counsel's sole
8 discretion, the client, client representative, or insurance company representative, as applicable, need
9 not attend.

10 The purpose of the requirement of personal attendance is to have a representative present who
11 has both the authority to exercise his or her own discretion, and the realistic freedom to
12 exercise such discretion without the negative consequences, in order to settle the case during the
13 settlement conference without consulting someone else who is not present. In the event counsel for
14 any party is aware of any circumstance which might cast doubt on a client's compliance with this
15 paragraph, he/she shall immediately discuss the circumstance with opposing counsel to resolve it well
16 before the settlement conference, and, if such discussion does not resolve it, request a telephone
17 conference with the court and counsel.

18 Counsel appearing for the settlement conference without their client representatives or
19 insurance company representatives, authorized as described above, will cause the settlement
20 conference to be canceled or rescheduled. The non-complying party, attorney or both may be assessed
21 the costs and expenses, including attorneys fees, incurred by other parties and the court as a result of
22 such cancellation, as well as any additional sanctions deemed appropriate by the court. Counsel are
23 responsible for timely advising any involved non-party insurance company of the requirements of this
24 order.

25 The conference is intended to facilitate settlement of this case. It will be conducted in such a
26 manner as not to prejudice any party in the event settlement is not reached. To that end, all matters
27 communicated to the undersigned in confidence will be kept confidential, and will not be disclosed
28 to any other party, or to the trial judge. The undersigned, of course, will not serve as the trial judge

1 in this case.

2 At the settlement conference the parties, by counsel, shall give a brief (5-10 minute)
3 non-confrontational presentation outlining the factual and legal highlights of their case. [If the parties
4 believe the initial joint session will be counter productive, please state so in your respective settlement
5 briefs along with your rationale for same.] Thereafter, separate, confidential caucuses will be held
6 with each party and/or the party's representative(s).

7 Settlement conferences are often unproductive unless the parties have exchanged demands and
8 offers before the conference and made a serious effort to settle the case on their own. **Before arriving**
9 **at the settlement conference the parties are to negotiate and make a good faith effort to settle the**
10 **case without the involvement of the Court. Specific proposals and counter proposals shall be**
11 **made.** Plaintiff(s) shall make an offer to defendant(s) ten (10) days prior to the settlement conference.
12 Defendant(s) shall make a counter offer to plaintiff(s) five (5) days prior to the settlement conference.

13 **PREPARATION FOR SETTLEMENT CONFERENCE**

14 In preparation for the settlement conference, the attorneys for each party shall submit a
15 confidential settlement conference statement for the court's *in camera* review. The settlement
16 conference statement shall contain the following:

- 17 1. A brief statement of the nature of the action.
- 18 2. A concise summary of the evidence that supports your theory of the case, including
19 information which documents your damages claims. You may attach to your statement
20 those documents or exhibits which are especially relevant to key factual or legal issues,
21 including selected pages from deposition transcripts or responses to other discovery
22 requests. **Exhibits are to be tabbed and an exhibit index shall be included.**
- 23 3. An analysis of the key issues involved in the litigation.
- 24 4. A discussion of the strongest points in your case, both legal and factual, **and a frank**
25 **discussion of the weakest points as well.** The court expects you to present a candid
26 evaluation of the merits of your case.
- 27 5. A further discussion of the strongest and weakest points in your opponents' case, but only
28 if they are more than simply the converse of the weakest and strongest points in your case.

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- 2 6. An estimate of the cost (including attorney's fees and costs) of taking this case through
- 3 trial.
- 4 7. A history of settlement discussions, if any, which details the demands and offers which
- 5 have been made, and the reasons they have been rejected.
- 6 8. The settlement proposal that you believe would be fair.
- 7 9. The settlement proposal that you would honestly be willing to make in order to conclude
- 8 this matter and stop the expense of litigation.

9 The settlement conference statements shall be received in my chambers, 400 S. Virginia Street,

10 Suite 405, not later than **WEDNESDAY, DECEMBER 5, 2018**. DO NOT DELIVER OR MAIL

11 THEM TO THE CLERK'S OFFICE; DO NOT SERVE A COPY ON OPPOSING COUNSEL.

12 The settlement conference statement should be delivered to my chambers in an envelope clearly

13 marked "Confidential Contains Settlement Brief."

14 The purpose of the settlement conference statement is to assist the court in preparing for and

15 conducting the settlement conference. In order to facilitate a meaningful conference, your **utmost**

16 **candor** in responding to all of the above listed questions is required. The settlement conference

17 statements will not be seen by the trial judge. The confidentiality of each statement will be strictly

18 maintained in my chambers. Following the conference, the settlement conference statements will be

19 destroyed.

20 DATED: November 20, 2018.

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23 ROBERT A. MCQUAID, JR.

24 UNITED STATES MAGISTRATE JUDGE

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